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Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

JERALD D. SAUNDERS,
Petitioner,

v.

UNITED STATES OF AMERICA

On Petition for Writ of Certiorari
To The United States Court of Appeals, Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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25 pp

Question Presented for Review

[In this case the bankruptcy court had granted the debtor's motion for voluntary dismissal of his chapter 7 proceeding upon the debtor's stated intention in his motion that he would file a second case immediately. The court later held that a notice of tax lien recorded by the IRS during the interval between the signature of the dismissal order and the entry of the order on the clerk's docket violated the automatic stay in the first case and was void.]

Whether the entry of a final order on the bankruptcy court clerk's docket is a condition precedent to the general effectiveness of the final order, and not just for the purpose of setting the time for appeal.

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Citations of the Official and Unofficial Reports of Opinions and Orders Entered by the Lower Courts

The bankruptcy court opinion is reported at 1996 Bankr. LEXIS 1928 (Bankr. S.D. Fla. 1996).

The district court opinion is published at 240 B.R. 636 (S.D. Fla. 1999).

The bankruptcy court opinion on remand from the district court, addressing an issue not relevant to this petition, is published at 243 B.R. 847 (Bankr. S.D. Fla. 1999).

The circuit court decision is unpublished.

Statement of Jurisdiction

The decision of the Court of Appeals for the Eleventh Circuit was entered on October 4, 2001, and its mandate issued on November 26, 2001.

This is a petition for writ of certiorari to be granted upon a judgment or decree of a court of appeals, pursuant to 28 U.S.C. §1254(1).

United States as Party

The United States of America is a party to this petition. The petitioner's counsel has made service of this petition upon Theodore B. Olson, Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, Washington, DC 20530-0001, and Anne R. Schultz, Chief, Appellate Division, U.S. Attorney, 99 N.E. 4th Street, Miami, FL 33132, and Randolph L. Hutter, Appellate Division, Dept. of Justice, P.O. Box 502, Washington, DC 20044.

Constitutional Provisions, Statutes, and Rules Involved in the Case

11 U.S.C. §362(a)(4) and (5):

Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of–

* * *

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title.

11 U.S.C. §362(c)(2):

Except as provided in subsections (d), (e), and (f) of this section –

the stay of any other act under subsection (a) of this section continues until the earliest of –

(A) the time the case is closed;
(B) the time the case is dismissed; or
(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied.

Rule 5003(a), Fed. R. Bankr. P.:

Bankruptcy Dockets. The clerk shall keep a docket in each case under the Code and shall enter thereon each judgment, order, and activity in that case as prescribed by the Director of the Administrative Office of the United States Courts. The entry of a judgment or order in a docket shall show the date the entry is made.

Rule 9001(7), Fed. R. Bankr. P.:

The definitions of words and phrases in §101, §902 and §1101 and the rules of construction in §102 of the Code govern their use in these rules. In addition, the following words and phrases used in these rules have the meanings indicated:

* * *

"Judgment" means any appealable order.

Rule 9002(5), Fed. R. Bankr. P.:

The following words and phrases used in the Federal Rules of Civil Procedure made applicable to cases under the Code by these rules have the meaning indicated unless they are inconsistent with the context:

* * *

"Judgment" includes any order appealable to an appellate court.

Rule 9020(c), Fed. R. Bankr. P.:

Service and Effective Date of Order; Review. The clerk shall serve forthwith a copy of the order of contempt on the entity named therein. The order shall be effective 10 days after service of the order and shall have the same force and effect as an order of contempt entered by the district court unless, within the 10 day period, the entity named therein serves and files objections prepared in the manner provided in Rule 9033(b). If timely objections are filed, the order shall be reviewed as provided in Rule 9033.

Rule 9021, Fed. R. Bankr. P.:

Except as otherwise provided herein, Rule 58 F.R. Civ. P. applies in cases under the Code. Every judgment entered in an adversary proceeding or contested matter shall be set forth on a separate document. A judgment is effective when entered as provided in Rule 5003. The reference in Rule 58 F. R. Civ. P. to Rule 79(a) F.R. Civ. P. shall be read as a reference to Rule 5003 of these rules.

Rule 58, Fed. R. Civ. P.:

Subject to the provisions of Rule 54(b): (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court; (2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth on a separate document. A

judgment is effective only when so set forth and when entered as provided in Rule 79(a). Entry of the judgment shall not be delayed, nor the time for appeal extended, in order to tax costs or award fees, except that, when a timely motion for attorneys' fees is made under Rule 54(d)(2), the court, before a notice of appeal has been filed and has become effective, may order that the motion have the same effect under Rule 4(a)(4) of the Federal Rules of Appellate Procedure as a timely motion under Rule 59. Attorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course.

Rule 79(a), Fed. R. Civ. P.:

(a) Civil Docket. The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, order, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issues and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered, the clerk shall enter the word "jury" on the folio assigned to that action.

General Orders in Bankruptcy, No. I (promulgated by the Supreme Court, November 28, 1898):

The clerk shall keep a docket, in which the cases shall be entered and numbered in the order in which they are commenced. It shall contain a memorandum of the filing of the petition and of the action of the court thereon, of the reference of the case to the referee, and of the transmission by him to the clerk of his certified record of the proceedings, with the dates thereof, and a memorandum of all proceedings in the case except those duly entered on the referee's certified record aforesaid. The docket shall be arranged in a manner convenient for reference, and shall at all times be open to public inspection.

General Orders in Bankruptcy, No. II (promulgated by the Supreme Court, November 28, 1898):

The clerk or the referee shall indorse on each paper filed with him the day and hour of filing, and a brief statement of its character.

Statement of the Case

The petitioner, Jerald D. Saunders ("Mr. Saunders"), was the debtor and plaintiff in an adversary proceeding commenced in his chapter 7 bankruptcy case. In the adversary proceeding he sought a finding of the dischargeability of certain federal income tax obligations and an adjudication of the validity of two liens filed by the Internal Revenue Service. The trial judge, United States Bankruptcy Judge Raymond B. Ray, entered a judgment in favor of Mr. Saunders as to certain tax years, and against him as to certain other tax years. The bankruptcy court also voided both liens. The judgment is reproduced in the *Appendix*, pp. 1-16.

From that Memorandum Decision and Order both sides appealed in 1996.

On February 25, 1999, United States District Judge William Dimitrouleas affirmed the bankruptcy court's determination of which taxes were discharged, and affirmed the avoidance of the earlier of the two tax liens, but reversed as to the second lien and remanded for further clarification by the bankruptcy court on a minor issue not relevant to this petition. The district court decision is published at 240 B.R. 636 (S.D. Fla. 1999), and reproduced in the *Appendix*, pp 17-35. The reversal has the effect of returning the Internal Revenue Service to a fully secured position on both discharged and nondischarged taxes, because Mr. Saunders owns an individual retirement account--rolled over from a Pan American Airways 401K plan—which is not immune from levy by the IRS.

On remand, the bankruptcy court rendered two supplemental decisions which entered judgment in accordance with the mandate and made other findings not

relevant to this petition. Upon the parties' stipulation that the matter was ripe for adjudication in the district court, the district court entered a final appealable order, from which an appeal was taken to the court of appeals.

Mr. Saunders did *not* appeal that portion of Judge Dimitrouleas' order finding that 1984, 1985, and 1986 taxes are nondischargeable. And the United States did *not* appeal that portion of Judge Dimitrouleas' order finding that the earlier of the two tax liens was properly avoided by the bankruptcy court. Consequently, the 1978, 1979 and 1987 taxes, totaling roughly $214,000 in 1994, are discharged, and the 1983, 1984, 1985, and 1986 taxes, totaling roughly $298,000 in 1994, are not discharged. But all of the taxes are fully secured by the second tax lien, against Mr. Saunders' IRA. The only subject before the court of appeals was the validity of the second tax lien, and the only issue was whether the dismissal order had yet taken effect when the tax lien was recorded before the order was docketed.

The court of appeals affirmed, without opinion, on October 4, 2001. The judgment is reproduced in the *Appendix*, pp. 36-37.

The basis for federal jurisdiction in the court of first instance—the bankruptcy court—is 28 U.S.C. §1334 and 28 U.S.C. §157(b)(1), and the district court's general order of reference made under 28 U.S.C. §157(a). The contested matter (motion to dismiss the first bankruptcy case) and the adversary proceeding (seeking to invalidate the tax lien) were both "core matters" within the meaning of 28 U.S.C. §157(b)(2)(A) and (K).

Argument

This case presents a single issue of law, and no disputed issues of fact.

The decision of the court of appeals is squarely in conflict with the only other circuit court decisions on point, those by the Second and Fifth Circuit Courts of Appeals

Although the decision of the court of appeals is unpublished, it is a *per curiam* affirmance of a published decision of the district court, 240 B.R. 636 (S.D. Fla. 1999).

The issue— whether the Supreme Court intended the plain meaning of the word "effective" in its rule on judgments and final orders— is one of great importance, because the plain meaning of Rule 9021 is consonant with a principle of fairness inherent in the rules— that judgments and other final orders are not effective until the public has access to them.

It is the petitioner's contention that *final orders* become effective— as the rule states— when docketed by the clerk. It is the *government's* contention that the effectiveness of final orders, except for the purpose of determining the deadline to file a motion for reconsideration or a notice of appeal, is no different than the effectiveness of nonfinal orders— that they become effective either upon pronouncement, or upon being reduced to writing, or possibly upon being delivered to the clerk.

Facts

The Internal Revenue Service served a Notice of Levy, directed to Mr. Saunders' individual retirement accounts, upon the stock brokerage firm Smith Barney Shearson in 1994, seeking to apply the funds in Mr. Saunders' IRA's to the payment of his tax obligations. At

the time, the 1978, 1979, and 1987 taxes were already dischargeable in the event Mr. Saunders filed bankruptcy. On the date that Smith Barney was to release the funds, Mr. Saunders filed a chapter 7 petition for relief in the bankruptcy court. Upon the filing of the petition, 11 U.S.C. §362(a) had the effect of automatically staying the levy, and the automatic stay would remain in effect until the case was dismissed. 11 U.S.C. §362(c)(2).

On August 26, 1994, Mr. Saunders filed a Motion for Dismissal, explaining in the motion that additional taxes had become dischargeable since his original petition date and that he wished to dismiss and refile his case. Over the objection of the United States, the bankruptcy court at a hearing on September 8, 1994 announced that he would permit the dismissal.[1] Immediately following Judge Ray's pronouncement at the hearing that he would agree to the dismissal, and without knowing whether a dismissal order had actually been signed by the judge, the IRS recorded a Notice of Tax Lien in the Public Records of Broward County, Florida, at 2:32 p.m. on September 8, 1994.

If the recording were valid, it would cause the IRS to become secured, as to both dischargeable and nondischargeable taxes, interest, and penalties, against Mr. Saunders' individual retirement account.

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[1] Ultimately, the bankruptcy court would adopt the majority rule, that a debtor may not improve his position as to dischargeability by dismissing and refiling his case, so Mr. Saunders does not receive the benefit of the refiling. Consequently, all taxes which were nondischargeable in Mr. Saunders' first bankruptcy case—filed to stay the levy upon Smith Barney—are nondischargeable in this case as well. Judge Dimitrouleas affirmed that finding, and Mr. Saunders did not further appeal from it.

It was later discovered that this perfection of the tax lien took place after Judge Ray had signed the order and delivered it to the clerk, but before the order was entered on the docket (4:09 p.m.). The next morning at 10:53 a.m., Mr. Saunders filed his second chapter 7 petition. It is in this second case that Judge Ray held that the September 8, 1994 tax lien was avoidable, because the Notice of Lien was recorded before the *docketing* of the dismissal order in the first case, citing Bankruptcy Rule 9021. According to the bankruptcy court, because the automatic stay was still in effect in the first case, the prematurely recorded lien was not valid. The district court reversed on this point, and the court of appeals affirmed the district court.

Legal Argument

Because actions taken in violation of the automatic stay are invalid, Easley v. Pettibone Michigan Corp., 990 F. 2d 905 (6th Cir. 1993), In re Schwartz, 954 F. 2d 569 (9th Cir. 1992), there is no doubt in this case that the tax lien would be invalid if it were recorded before the dismissal of the first chapter 7 case took effect. 11 U.S.C. §362(c)(2) (automatic stay expires only upon earlier of case closing, dismissal, or discharge). The only issue is when the dismissal took effect.

Dismissals of bankruptcy cases take effect only when the dismissal order is entered on the court docket. Fed. R. Bankr. P. 9021. That rule provides:

> Except as otherwise provided herein, Rule 58, F.R. Civ. P. applies in cases under the [Bankruptcy] Code. Every judgment entered in an adversary proceeding or contested matter shall be set forth on a separate document. A judgment is effective when entered as provided in Rule 5003. The reference in Rule 58 F.R. Civ. P. to Rule 79(a) F.R. Civ. P. shall be read as a reference to Rule 5003 of these rules.

The parties agree that the dismissal order is a "judgment"[2] entered in a "contested matter."[3] The disagreement between the parties is over whether "effective," in Rule 9021, means "effective for the purpose of setting the time for filing a motion for reconsideration or appeal."

Rule 9021 is based closely on Rule 58, Federal Rules of Civil Procedure. It specifically incorporates Rule 58 by reference, and makes only two emendations: (1) it limits the "separate document" provision to judgments in adversary proceedings and contested matters, and (2) it restates so much of Rule 58 as is necessary to refer the reader to the bankruptcy court docketing procedure in Bankruptcy Rule 5003 rather than the district court docketing procedure in Civil Rule 79(a).

Federal Rule 58, in relevant part, states:

> [U]pon a decision by the court granting other relief...the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a).

The docketing rules themselves, Bankruptcy Rule 5003 and Civil Rule 79(a), are also nearly identical to each other, providing in relevant part that the clerk shall keep a docket in each case and shall enter on it each judgment. The Advisory Committee Notes to the original enactment of Rule 5003 notes: "Subdivisions (a), (c), (d), and (e) are similar to subdivisions (a)-(d) of Rule 79, F.R. Civ. P."

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[2] "Judgment" means any appealable order. Fed. R. Bankr. P. 9001(7). See also, Fed. R. Bankr. P. 9002(5).

[3] Fed. R. Bankr. P. 9014.

The filing and docketing procedure have separate purposes, and separate procedures. The first two rules adopted under the Bankruptcy Act of 1898, addressed filing and docketing. They provided for the clerk to maintain a docket and to note on it "a memorandum of all proceedings in the case" and mandated that the docket "shall at all times be open to public inspection"; and that the clerk was to endorse onto each paper the day and hour of its filing. General Orders I, II (1898). Under the General Orders, judgments of the bankruptcy court were not effective before entry on the docket. Rosenberg v. Heffron, 131 F. 2d 80 (9th Cir. 1942).

The United States contended, and the district court agreed, that the use of the word "effective" was limited to starting the clock for motions for rehearing and for notices of appeal. It is true that the great majority of cases which cite to Rule 9021 or to Civil Rule 58 involve a determination of either the timeliness of an appeal or the ripeness for appeal; in the context of determining timeliness of appeal, the issue of "rendition versus clerk's entry" in federal courts dates back at least to Seymour v. Freer, 72 U.S. 822, 18 L. Ed. 564 (1866) (holding that an appeal bond filed within ten days after the clerk's entry but more than ten days after the judge's rendition was timely). However, the timeliness of an appeal is not the issue here. The issue is whether the Supreme Court, in choosing the word "effective," intended a narrower meaning than the plain meaning.

This Court, in holding that the phrase "excusable neglect" in a bankruptcy rule must be read according to its plain meaning, has stated that "[c]ourts properly assume, absent sufficient indication to the contrary, that Congress intends the words in its enactments to carry 'their ordinary, contemporary, common meaning.' Pioneer Investment Services, Inc. v. Brunswick Associates, Ltd., 507 U.S. 380, 389, 123 L. Ed. 2d 74, 113 S. Ct. 1489 (1993) , citing Perrin v. United States, 444 U.S. 37, 42, 62 L. Ed. 2d 199, 100 S. Ct. 311

(1979); see also United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241, 103 L. Ed. 2d 290, 109 S. Ct. 1026 (1989) (applying "plain meaning" principles to language of Bankruptcy Code).

Reported cases involving the validity of an act which occurred between the rendition and the docketing of an order are relatively uncommon, but courts have specifically addressed the issue of whether the dismissal of a bankruptcy case is effective upon rendition for purposes other than starting the appellate clock. *Except for the decision of the district court in the present case, every published decision by a district court or a court of appeals supports the petitioner's view that the plain meaning of "effective" determines that a final order is not operative and has no effect prior to its docketing.*

The Court of Appeals for the Fifth Circuit addressed the scope of "effectiveness" in In re American Precision Vibrator Company, 863 F. 2d 428 (5th Cir. 1989). In that case, a bankruptcy judge had rendered an order granting a motion to dismiss a chapter 11 case, apparently based on the clerk's failure to note a pending opposition to the motion, and the same judge rendered another order two weeks later denying the same motion to dismiss. Only after the second order was rendered were the two orders docketed pursuant to Rule 5003, with the second order docketed first. A successor judge declined to clarify which order was correct, and on appeal the district court vacated the second order on the basis that the rendering of the first order—dismissing the case—deprived the bankruptcy court of further jurisdiction. The Fifth Circuit reversed, holding that the dismissal order was not effective because the dismissal order had not yet been entered on the clerk's docket when the subsequent order was so docketed. Id. at 429.

Similarly, in Coones v. Mutual Life Insurance Company of New York, 168 B.R. 247 (D. Wyo. 1994), District Judge Alan B. Johnson considered whether a dismissal order

could have any effect before it was docketed. In that case, the bankruptcy court had pronounced the dismissal of a chapter 11 proceeding at a hearing on March 14, 1990, and heard an undersecured creditor's motion to modify the automatic stay the next day. The order from the second hearing, modifying the stay to permit completion of a foreclosure, was actually entered before the dismissal order. Pursuant to an option in the dismissal order, the debtors converted their cases to chapter 7 proceedings, and continued to oppose the creditor's foreclosure. The debtors argued on appeal that the dismissal order was effective when pronounced, depriving the bankruptcy court of the authority to hear and grant the stay relief motion the next day. In holding that the dismissal order had no effect when the stay relief order was granted, and affirming the bankruptcy court, the district court stated:

> Fed. R. Bankr. P. 9021 provides, in relevant part, that
>
> "[a] judgment is effective when entered as provided in Rule 5003." Thus, a bankruptcy judgment does not take effect when it is "rendered," but only when it is "entered" by the clerk of the bankruptcy court in the manner provided for in Rule 5003.

Id at 258.

In In re Barbieri, 199 F. 3d 616 (2nd Cir. 1999), at a hearing on a chapter 13 debtor's motion to sell property, the bankruptcy court announced that he was *sua sponte* converting the debtor's case to a chapter 7 proceeding. The debtor's counsel immediately sought to dismiss the case. The bankruptcy court denied the request, stating "I will enter an order today converting this case to chapter 7." Id. at 622. The district court affirmed the conversion order. Noting that voluntary dismissal of a chapter 13 case is a matter of right, the Court of Appeals for the Second Circuit

held that the announced order of conversion was ineffective to prevent the debtor from dismissing her case:

> [T]he court did not order the conversion until after the debtor's counsel had requested to withdraw the petition. Moreover, Federal Rule of Bankruptcy Procedure 9021(a) specifies, in relevant part, that "[a] judgment is effective when entered as provided in Rule 5003." In turn, Rule 5003(a) provides, in relevant part, that "the clerk shall keep a docket in each case under the Code and shall enter thereon each judgment, order, and activity in that case." In this case, the Bankruptcy Court's order had not been entered on the Clerk's docket pursuant to Rule 4003 at the time Barbieri moved to dismiss. Accordingly, the conversion had not become effective before Barbieri's request for voluntary dismissal was made.

In re Barbieri, at 622. Accord, Beatty v. Traub, 162 B.R. 853 (9th Cir. BAP 1994).

The effective-upon-docketing rule has also been cited for the converse position, that once the dismissal order *has been* entered on the docket, the court loses jurisdiction to determine other motions. In re Petty, 848 F. 2d 654, 655 (5th Cir. 1988) (holding that, where an order denying a landlord's motion to compel a debtor's surrender of property was signed June 16 and entered by the clerk on July 16, but a dismissal order was entered by clerk on July 2, the dismissal is effective to deprive the court of jurisdiction to enter an order on a surrender motion).

In the present case, the district court cited no authority whatsoever for its ruling, but offered the observation that in his experience the docketing of orders is sometimes delayed and expressed a concern that litigants would ignore his rulings until they were docketed by the clerk. The court of appeals apparently agreed. However,

the plain meaning of "effective" in Rule 9021 should not generate any such concern. First, Rule 9021 applies by its terms to "judgments" only, a phrase which encompasses dismissal orders, conversion orders, and other appealable orders, Fed. R. Bankr. P. 9001(7), 9002(5), but not interlocutory orders. Rule 9021 (and its counterpart, Federal Rule 58) give no comfort to a party who would disregard an injunction, a discovery order, or any other interlocutory order. Interlocutory orders are effective upon oral pronouncement or written rendition.

Second, in the rare instance where a judge intends , for a particular reason, that a judgment be effective even before it is docketed, the judge can so direct. In scores of published decisions, federal courts have directed, even after docketing, that particular orders be treated as having been entered *nunc pro tunc* for the very purpose of assuring that the effectiveness was not delayed. See, cases cited at Moore's Federal Procedure, ¶58.08. The bankruptcy judge here did not intend *nunc pro tunc* dismissal, as is clear from his later ruling that even the filing of his dismissal order with the court clerk did not make it effective before docketing.

Although Bankruptcy Rule 9021 derives from the earlier general orders entered by the Supreme Court in conjunction with the 1898 bankruptcy statute, the historical antecedents of the "effective upon docketing" rule should be examined. This Court once considered this issue, not in the context of Bankruptcy Rule 9021 or Civil Rule 58, but rather in the context of a state court rule. In Anglo-Californian Bank v. Mahoney Mining Co., 1 Fed. Cases 392 (D. Cal. 1878), a judgment which, among other things, ousted the board of directors of a corporation, had been prepared and dated by the judge, but neither filed nor entered on the clerk's docket, at the time the board undertook a further corporate action. The district judge held that the corporate action was valid despite the rendition of the judgment, and

the Supreme Court affirmed, noting particularly that the rendition of the judgment was of no effect until it was filed by the clerk. Anglo-Californian Bank v. Mahoney Mining Co., 104 U.S. 192, 26 L. Ed. 707 (1881).

Furthermore, the Supreme Court has approved at least one other bankruptcy rule, Rule 9020, which uses the term "effective" in relation to a type of order. A comparison of the two consecutive rules (Bankruptcy Rules 9020 and 9021) shows that the word "effective" means to have force or effect, which is consistent with ordinary dictionary definitions of the word. Rule 9020 provides that a contempt order entered by a bankruptcy judge "shall be effective 10 days after service of the order and shall have the same force and effect as an order of contempt entered by the district court, unless, within the 10 day period, the entity named therein serves and files objections...." There is no reason, under the principle of *ejusdem generis*, to give a different meaning to the same word in consecutive rules.

In summary, the rulings of the district court and the court of appeals in this case have permitted the Internal Revenue Service to elevate its position from unsecured creditor to a creditor secured by a lien on the petitioner's IRA accounts without first awaiting the entry of the dismissal order on the clerk's docket. To avoid a race by litigants speculating on when an order would be signed, or filed, or docketed, this Court established docketing as the most appropriate time for a final order to take effect. All other published federal court decisions on the issue, of actions taken prior to docketing, have held that final orders are ineffective before docketing. There is no reason to believe that this Court intended any more limited meaning for the word "effective," and there is substantial basis for believing that the Court intended its plain meaning.

Wherefore, the petitioner seeks a writ of certiorari to review the judgment of the court of appeals, this 2nd day of January, 2002.